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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): INFAP139US

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on August 11, 2008

Signature /Christine Gillroy/

Typed or printed name Christine Gillroy

Application Number	Filed
10/772,650	February 4, 2004

First Named Inventor: Ying-Chien Lin

Art Unit	Examiner
2618	Eugene Yun

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 36,981
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

/Thomas G. Eschweiler/
Signature

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(216) 502-0600
Telephone number

August 11, 2008
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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Docket No. INFAP139US I0431US/MGL/pp

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re **PATENT** application of:

Applicant:	Ying-Chien Lin
Application No.:	10/772,650
For:	A METHOD FOR BALANCING THE LOAD OF A WIRELESS LOCAL AREA NETWORK
Filing Date:	February 4, 2004
Examiner:	Eugene Yun
Art Unit:	2618

PRE-APPEAL REQUEST FOR REVIEW IN RESPONSE TO THE ADVISORY ACTION DATED JULY 10, 2008

Mail Stop AF
Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Favorable reconsideration of the above-identified application is respectfully requested in view of the following amendments and remarks.

REMARKS

Claims 1-9 are pending. Reconsideration of the application is respectfully requested for at least the following reasons.

I. REJECTION OF CLAIMS 1-9 UNDER 35 U.S.C. § 103(a)

Claim 1-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,842,460 (Olkkonen et al.) in view of U.S. Patent No. 6,671,259 (He et al.). Withdrawal of the rejection is respectfully requested for at least the following reason.

i. He et al. do not send a probe-response frame from the access point with the lowest load to the station, as recited in claims 1 and 9.

Claim 1 is directed to a method for balancing the load of a wireless local area network comprising a plurality of access points. The method comprises selecting an access point with the lowest load, and then sending a probe-response frame ***from the selected access point with the lowest load*** to the station that sent a probe-request frame to the access points. The combination of Olkkonen et al. and He et al. does not teach this feature.

As conceded in the Office Action, Olkkonen et al. do not teach sending a probe-response frame from the access point with the lowest load to the station as claimed. (*See* O.A., 4/11/08, p. 2, section 2, paragraph 5). However, the Office Action asserts that He et al. do teach this feature, citing to Col. 4, lines 46-49 of the reference. (*See* O.A., 4/11/08, p. 3, paragraph 2). As will be more fully appreciated below, He et al. do not teach this feature, and thus the combination of Olkonnen et al. and He et al. do not render obvious the invention of claim 1.

He et al. disclose a load balancing system, as illustrated in Fig. 1, that includes multiple client systems 11a-11n, a load balancing server (LBS) selector 15, load

balancing (LB) servers 17a, b, and a plurality of servers 18a-18n, 19a-19m. (*See* Fig. 1, Col. 3, lines 1-17).

In He et al., a request is made and sent by the client system, wherein the request may be a request for a server on the network to perform a specific task. (*See, e.g.*, Col. 3, lines 55-58). The load balancing (LB) server receives the request *via* the LBS selector 15, and then selects one of the servers to receive the client request. (*See, e.g.*, Col. 4, lines 1-3). The LB server selects a particular server so as to balance tasks among the group of servers. (*See, e.g.*, Col. 4, lines 5-9). To that end, the LB server characterizes each of the available servers based on network load measurements. (*See, e.g.*, Col. 4, lines 25-27). Therefore the available servers are ranked by the LB server 17 in order from low network traffic server to high network traffic server. (*See, e.g.*, Col. 4, lines 39-41). Subsequently, ***the LB server receives the client request from the LBS selector 15, and then selects the server 18a-18n to handle the client request***. (*See, e.g.*, Col. 4, lines 46-49).

It is unclear from the teaching of He et al. that any probe-response frame is sent back ***from the access point with the lowest load*** back to the station as claimed. Rather, the LB server simply characterizes the servers based on network load measurements, and then selects one as needed. ***The only information provided by the servers (access points) is the network load information provided to the LB server, which is not a station according to the Office Action.*** If the information sent back to the client is considered a probe-response frame, such probe-response frame is sent from the LB server 17 back to the client system 11, ***and does not come from any of the servers 18***. Therefore He et al. do not teach sending a probe-response ***from the access point (server)*** to the station (client) as recited in claim 1. Therefore the combination of Olkkonen et al. and He et al. does not render obvious the invention of claim 1.

A similar argument applies to independent claim 9, wherein the system is configured to send a probe-response from the access point with the lowest load to the station. Accordingly, withdrawal of the rejection of claim 9 is respectfully requested.

ii. He et al. do not teach selecting an access point as a master access point and the other access points as slave access points, as recited in claim 2.

Claim 2 further recites that selecting an access point with the lowest load comprises, *inter alia*, ***selecting an access point as a master access point***, and assigning other access points as slave access points. He et al. do not teach this feature.

According to the Office Action, the servers 18 in He et al. correspond to the claimed access points. However, He et al. do not teach that one of the servers 18 in Fig. 1 is selected as a master while the others are selected as slave access points as claimed. Rather, as taught in Col. 7 of He et al., the LB server 17 that performs load balancing (element 17a,b in Fig. 1) selects one of the servers 18 for a specified session. (*See, e.g.*, Col. 7, lines 35-48). This selection does not make the selected server 18 a master and the other servers a slave as claimed. Therefore claim 2 is non-obvious over the cited art for at least this additional reason. Accordingly, withdrawal of the rejection is respectfully requested.

iii. He et al. do not teach or suggest collecting load index packets from the other access points, comparing its own load (for each access point) to other loads, and turning on or off a probe-response function of the respective access points in response, as recited in claim 3.

Claim 3 recites that a load comparison comprises comparing its own load by each access point with the loads of the other access points, and turning on a probe-response function of the access point with the lowest load, and turning off the probe-response function of the other access points. In other words, according to the invention of claim 3, each of the access points receive load index packets from all the other access points. Using the load index packets, each access point can compare its load to the loads of the other access points. Based on the comparison, the access point with the lowest load turns on his probe-response function, while all the other access

points turn off their respective probe-response function. He et al. do not teach this feature.

He et al. instead has an LB server 17 that performs network load measurements and ranks the servers as high or low network traffic servers. (*See, e.g.*, Col. 4, lines 25-41). Therefore He et al. do not teach this feature of the access points as claimed. In addition, Olkkonnen et al. do not remedy the deficiencies in He et al. Therefore claim 3 is non-obvious over the cited art for at least this additional reason. Accordingly, withdrawal of the rejection is respectfully requested.

II. CONCLUSION

For at least the above reasons, the claims currently under consideration are believed to be in condition for allowance.

Should the Examiner feel that a telephone interview would be helpful to facilitate favorable prosecution of the above-identified application, the Examiner is invited to contact the undersigned at the telephone number provided below.

Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, INFAP139US.

Respectfully submitted,
ESCHWEILER & ASSOCIATES, LLC

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